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Commission on Crime Prevention and Criminal Justice
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Item 7 of the provisional agenda*
Use and application of United Nations standards and norms in crime prevention and criminal justice

South Africa: draft resolution

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the adoption of the following draft resolution:

Promoting access to legal aid in criminal justice systems

The Economic and Social Council,

Recalling the Universal Declaration of Human Rights,[1] which enshrines the key principles of equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an independent and impartial tribunal, established by law, along with all the guarantees necessary for the defence of anyone charged with a penal offence, other minimum guarantees and the entitlement to be tried without undue delay,

Recalling also the International Covenant on Civil and Political Rights,[2] in particular its article 14, which states that all persons charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law,

Recalling further the Basic Principles on the Role of Lawyers,[3] which stipulate that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings, that the duties of lawyers towards their clients include assisting them in every appropriate way, taking legal action to protect their interests, and that lawyers, in protecting the rights of their clients and in promoting the cause of justice, are

* E/CN.15/2018/1.

[1] General Assembly resolution 217 A (III).

[2] See General Assembly resolution 2200 A (XXI), annex.

[3] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

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required to seek to uphold human rights and fundamental freedoms recognized by national and international law,

Taking note of General Assembly resolution 70/1 of 25 September 2015, entitled "Transforming our world: the 2030 Agenda for Sustainable Development", in particular Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels) and target 16.a (Strengthen relevant national institutions, including through international cooperation), which form part of a balanced and integrated approach to achieving sustainable development in its three dimensions, namely, economic, social and environmental,

Recalling the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,[4] in which it is recognized that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law, and recalling also that guideline 16 of those Principles and Guidelines stipulates that States should take measures, in consultation with civil society and justice agencies and professional associations, to set quality standards for legal aid services and to establish monitoring and evaluation mechanisms to ensure the quality of legal aid services,

Recalling also the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation,[5] in which Member States stated that they would endeavour to continue the development of specialized networks of practitioners, including legal aid providers and defence lawyers, to exchange information and share good practices and expertise, and to support community initiatives and foster the active participation of citizens in ensuring access to justice for all,

Recalling further General Assembly resolution 70/174 of 17 December 2015, in which the Assembly invited Governments to take into consideration the Doha Declaration when formulating legislation and policy directives,

Bearing in mind the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),[6] according to which prisoners, including those under arrest, awaiting trial or convicted, should be informed of their right to legal advice, including through legal aid schemes, and procedures for making requests or complaints, should be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, and should have access to effective legal aid,

Taking into consideration that the Commission on Crime Prevention and Criminal Justice, in its resolution 25/2 of 27 May 2016, encouraged Member States to facilitate the sharing of information and best practices among legal aid providers, making the best possible use of existing information and communication platforms, and to share expertise on the development of national-level indicators for target 16.3 of the Sustainable Development Goals (Promote the rule of law at the national and international levels and ensure equal access to justice for all),

Taking into consideration also that, in the same resolution, the Commission invited Member States to encourage the development of national, regional and international specialized networks of legal aid providers to exchange information and share good practices and expertise, including by considering, in the context of deliberations at the second International Conference on Access to Legal Aid in Criminal Justice Systems, potential options for establishing a global virtual network

[4] General Assembly resolution 67/187, annex.
[5] General Assembly resolution 70/174, annex.
[6] General Assembly resolution 70/175, annex.

to facilitate legal aid providers at the national, regional and international levels to establish contact,

Taking into consideration further that, also in the same resolution, the Commission urged Member States to ensure that children in contact with the justice system were informed of their rights and had prompt access to legal assistance and, where appropriate, legal aid, during police interrogation and while in police detention and requested the United Nations Office on Drugs and Crime to continue to develop and disseminate, subject to the availability of extrabudgetary resources, relevant tools such as best practices, handbooks and training manuals,

Recalling the publication by the United Nations Office on Drugs and Crime of *Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners*, and affirming that early access to legal aid is the key to guaranteeing a fair trial and the rule of law, improves the efficiency and fairness of the criminal justice system and represents an important safeguard against torture and other forms of ill treatment, and that the quality of legal aid provision is an important factor in ensuring both its appropriateness and its effectiveness,

Bearing in mind the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[7] in particular its principle 11, which states that a detained person shall have the right to defend himself or herself, or to be assisted by counsel as prescribed by law, and its principle 17, which states that a detained person shall be entitled to have the assistance of a legal counsel, and that if a detained person does not have a legal counsel of his or her own choice, he or she shall be entitled to have a legal counsel assigned to him or her by a judicial or other authority,

Recalling the Bangkok Declaration on Synergies and Responses: Strategic Alliance in Crime Prevention and Criminal Justice,[8] in which Member States were called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provisions of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

Recalling also the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,[9] in which it was recommended that Member States reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms,

Recalling further Economic and Social Council resolution 2007/24 of 26 July 2007 on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa,

1. *Welcomes* the holding of the first and second International Conference on Access to Legal Aid in Criminal Justice Systems, in Johannesburg, South Africa, from 24 to 26 June 2014, and in Buenos Aires from 15 to 17 November 2016, which was attended by more than 200 legal aid policymakers and practitioners from more than 60 countries, including representatives of ministries of justice, the judiciary, public defender offices and bar associations, as well as legal aid lawyers, community-based paralegals, members of civil society and experts, and takes note of their efforts to discuss common challenges in providing access to effective legal aid services in criminal justice systems and to propose practical and achievable solutions through the Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and the Buenos Aires Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems;

[7] General Assembly resolution 43/173, annex.
[8] General Assembly resolution 60/177, annex.
[9] General Assembly resolution 65/230, annex.

2. *Invites* Member States, in line with the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation,[5] to participate in the third International Conference on Access to Legal Aid in Criminal Justice Systems, to be held in Tbilisi from 13 to 15 November 2018, and in this context requests the United Nations Office on Drugs and Crime to make available any ensuing report to the Commission on Crime Prevention and Criminal Justice;

3. *Invites* Member States to encourage, in collaboration with other relevant stakeholders, the development of guidance tools relating to target 16.3 of the Sustainable Development Goals, including articulating a consensus on key components of access to justice, the role of lawyers and legal aid providers and good practices for reporting progress;

4. *Urges* Member States to collaborate with civil society and other relevant stakeholders to expand and improve reporting on progress towards target 16.3 of the Sustainable Development Goals, to seek more effective and innovative means of gathering and disseminating comprehensive data on access to legal aid and to allocate appropriate resources for these purposes;

5. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to convene an open-ended intergovernmental meeting of experts, with interpretation, to be tasked, in line with Commission on Crime Prevention and Criminal Justice resolution 25/2 of 27 May 2016 and further to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),[6] with developing relevant tools such as best practices, handbooks and training manuals, with studying and contributing to an international consensus regarding best practices in defining and measuring quality in legal aid services, with developing an instrument such as a basic set of principles or a set of guidelines for providing quality legal aid services, and with providing advisory services and technical assistance to Member States, upon request, in those areas;

6. *Encourages* Member States to adopt or strengthen legislative or other measures to ensure that effective legal aid is provided promptly at all stages of the criminal justice process and that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs, and to this end, also encourages Member States to take measures, in consultation with justice agencies, professional associations and other relevant stakeholders, to establish monitoring and evaluation mechanisms to ensure the quality of legal aid services;

7. *Also encourages* Member States to facilitate the sharing of information on mechanisms by which persons detained or arrested, as well as those suspected or accused of or charged with a criminal offence, may be given early access to legal assistance and, where appropriate, legal aid, and to facilitate the sharing of best practices in ensuring that such persons are informed of their rights and have access to legal assistance and, where appropriate, legal aid, promptly after arrest and during police interrogation, and that they may consult their legal representative freely and fully confidentially;

8. *Invites* Member States and other donors to provide extrabudgetary resources for those purposes, in accordance with the rules and procedures of the United Nations.

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